Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014

Message Text

PAGE 01 STATE 040746
ORIGIN SS-25

INFO OCT-01 ISO-00 SSO-00 /026 R

DRAFTED BY ARA/PAN:RRWYROUGH/JCHAAHR
APPROVED BY ARA:TATODMAN
S/S:SGOLDSMITH
ARA:JABUSHNELL
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P 160133Z FEB 78
FM SECSTATE WASHDC
TO AMEMBASSY PANAMA PRIORITY

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E.O. 11652:GDS

TAGS: PBOR, PN, US

SUBJECT: PROPOSED MEMORANDUM FOR THE PRESIDENT

FOR THE AMBASSADOR FROM TODMAN

1. PARAGRAPH TWO CONTAINS THE TEXT OF A PROPOSED MEMORANDUM FOR THE PRESIDENT ON THE TIMING FOR THE EXCHANGE OF INSTRUMENTS OF RATIFICATION OF THE TREATIES. I WOULD APPRECIATE HAVING YOUR COMMENTS ON IT AS SOON AS POSSIBLE. IN THE MEANTIME, WE ARE CIRCULATING THE DRAFT TO OTHERS IN THE DEPARTMENT TO BEGIN THE CLEARANCE PROCESS.

2. BEGIN TEXT: THE PANAMA CANAL TREATIES ARE NOT FULLY SELF-EXECUTING. IMPLEMENTING LEGISLATION MUST BE ENACTED BEFORE THE UNITED STATES WILL BE ABLE TO EXECUTE
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THEM. THEREFORE, WHEN THE SENATE GIVES ITS HOPED-FOR CONSENT TO RATIFICATION OF THE PANAMA CANAL TREATIES, CONFLICTING PRESSURES WILL EMERGE REGARDING THE TIMING FOR EXCHANGE OF THE INSTRUMENTS OF RATIFICATION.

THERE ARE THREE BASIC ALTERNATIVES:

.- - EXCHANGE THE INSTRUMENTS OF RATIFICATION SHORTLY AFTER THE TREATIES HAVE BEEN APPROVED BY THE SENATE.

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-- DEFER THE EXCHANGE UNTIL AFTER THE CONGRESS HAS BEGUN, BUT BEFORE IT COMPLETES, CONSIDERATION OF IMPLEMENTING LEGISLATION.

-- DELAY THE EXCHANGE UNTIL AFTER THE CONGRESS HAS ADOPTED IMPLEMENTING LEGISLATION.

THIS MEMORANDUM EXAMINES THESE ALTERNATIVES.

OPPONENTS OF THE TREATIES IN THE UNITED STATES CAN BE EXPECTED TO CREATE PRESSURE AGAINST AN EARLY EXCHANGE OF INSTRUMENTS. THIS SENTIMENT WILL FIND FAVOR AMONG HOUSE MEMBERS (218 AT LATEST COUNT) WHO HAVE SOUGHT A HOUSE ROLE IN TREATY APPROVAL. THEY WILL ATTEMPT TO EXPLOIT THE PRE-ELECTION ATMOSPHERE AND SEEK WHAT COULD AMOUNT TO A CONGRESSIONAL VETO BY TRYING TO DEFER THE EXCHANGE UNTIL IMPLEMENTING LEGISLATION HAS BEEN SUBMITTED TO AND ADOPTED BY BOTH HOUSES. (IN FACT, THE SENATE COULD VOTE A DELAY IN EXCHANGING THE INSTRUMENTS UNTIL AFTER THE LEGISLATION HAS BEEN APPROVED.) ON THE OTHER HAND, A STRONG OR STRONGER SENTIMENT CAN BE EXPECTED IN BOTH HOUSES TO COMPLETE LEGISLATIVE ACTION AS QUICKLY AS POSSIBLE. SENATE CONSENT TO THE TREATIES

WILL REINFORCE THIS VIEW AND TEND TO DEPOLITICIZE THE ISSUE. TREATY SUPPORTERS CAN BE EXPECTED TO PUSH FOR PROMPT ACTION ON LEGISLATION ON THE GROUNDS THAT THE BASIC POLITICAL DECISION HAS BEEN MADE AND THAT ONLY TECHNICAL DECISIONS REMAIN CONCERNING WHICH PROCEDURES SHOULD BE ESTABLISHED TO IMPLEMENT THE TREATY MOST EFFECTIVELY.

PRESSURE FOR AN EARLY EXCHANGE OF INSTRUMENTS OF RATIFICATION WILL COME PRIMARILY FROM PANAMA, BUT ALSO FROM VARIOUS LATIN AMERICAN COUNTRIES AND LEADERS WHO WOULD TEND TO CRITICIZE ANY DELAYS BY THE ADMINISTRATION IN EXCHANGING THE INSTRUMENTS. WHILE TORRIJOS WILL WANT A BRIEF TIME TO EVALUATE AND JUDGE ANY CHANGES, CONDITIONS AND UNDERSTANDINGS VOTED BY THE SENATE, HE WILL SEE

PANAMA'S ECONOMIC AND POLITICAL SITUATION AS MANDATING AN EXCHANGE OF INSTRUMENTS IN TIME TO ALLOW THE TREATIES TO GO INTO EFFECT IN 1978 -- THAT IS, AN EXCHANGE PRIOR TO JULY 1. ASSUMING FAVORABLE SENATE ACTION DURING THE LATTER HALF OF MARCH AND ALLOWING FOR A "RESPECTABLE" PERIOD FOR PANAMANIAN SCRUTINY, THERE WOULD THEN BE A FAVORABLE WINDOW OF ABOUT TWO MONTHS FOR THE EXCHANGE OF INSTRUMENTS (APRIL 20-JUNE 20).

FAILURE TO ACT DURING THAT TIME WOULD LEAD PREDICTABLY TO INCREASED FRETTING AND AGITATION IN PANAMA. WORRY

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ABOUT "KEEPING THE LID" ON INTERNAL AFFAIRS WOULD GROW. TORRIJOS COULD BE EXPECTED TO SIGNAL GROWING DOUBTS ABOUT OUR "REAL" INTENTIONS. THIS SEQUENCE HAS OCCURRED AT PREVIOUS TIMES IN THE NEGOTIATIONS AND WOULD ALMOST CERTAINLY OCCUR AGAIN. AS FRUSTRATING AS IT COULD BECOME, IT SHOULD NEVERTHELESS BE OBSERVED THAT TORRIJOS HAS ALWAYS RESTRAINED HIMSELF IN THE PAST AND COULD BE EXPECTED TO DO SO AGAIN FOR AS LONG AS SIX ADDITIONAL MONTHS, THAT IS UNTIL IMMEDIATELY AFTER THE CONGRESSIONAL

ELECTIONS IN NOVEMBER IF WE WERE TO CAREFULLY EXPLAIN OUR POLITICAL REALITIES TO HIM.

EVALUATION OF THE THREE ALTERNATIVES AT THIS TIME IS COMPLICATED BY SEVERAL FACTORS -- HOW LONG WILL THE SENATE DEBATE LAST? WHAT WILL BE ITS OUTCOME? HOW WILL PANAMA REACT? WILL TORRIJOS CALL FOR A SECOND PLEBISCITE? HOW RAPIDLY WILL THE CONGRESS CHOOSE TO DEAL WITH THE IMPLEMENTING LEGISLATION? NEVERTHELESS, SOME GENERAL EVALUATION OF THESE THREE ALTERNATIVES IS APPROPRIATE.

THE FIRST ALTERNATIVE, IMMEDIATE EXCHANGE OF INSTRUMENTS OF RATIFICATION, WOULD SATISFY TORRIJOS' REQUIREMENTS ALTHOUGH HE MIGHT FACE A RISK IN AGREEING TOO QUICKLY TO A MODIFIED TREATY. AT THE SAME TIME AN IMMEDIATE EXCHANGE WOULD OFFER THE GREATEST DIFFICULTIES FOR US DOMESTICALLY. ANY QUICK ACTION TO EXCHANGE INSTRUMENTS WOULD LEAD OPPONENTS TO PORTRAY THE ACTION AS AN ATTEMPT TO PRESSURE THE CONGRESS INTO ADOPTING THE IMPLEMENTING LEGISLATION WITHIN THE SIX MONTHS REQUIRED BEFORE THE TREATIES CAN ENTER INTO FORCE. SOME CONGRESSMEN WHO MIGHT OTHERWISE SUPPORT IMPLEMENTING LEGISLATION COULD BE EXPECTED TO CHAFE AT BEING USED IN WHAT SOME WOULD

DESCRIBE AS A "RUBBER STAMP" ROLE. IF THE CONGRESS WERE TO REACT NEGATIVELY, AN IMMEDIATE EXCHANGE OF INSTRUMENTS WOULD RISK HAVING THE SIX MONTH PERIOD BETWEEN EXCHANGE OF INSTRUMENTS AND ENTRY INTO FORCE OF THE TREATY PASS WITHOUT THE UNITED STATES HAVING THE INSTRUMENTS WITH WHICH TO EXECUTE THE TREATIES.

THE THIRD ALTERNATIVE, DELAY UNTIL IMPLEMENTING LEGISLA-TION HAS BEEN ADOPTED, IS UNDESIRABLE BOTH WITH RESPECT

TO OUR RELATIONS WITH PANAMA AND LEAVING THE INITIATIVE FOR THE EXCHANGE OF INSTRUMENTS IN CONGRESSIONAL HANDS. WHILE THE SENATE COULD CONCEIVABLY FORCE THIS ALTERNATIVE ON THE ADMINISTRATION, IT COULD RES LT IN A PROTRACTED

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DELAY AND WOULD NOT SERVE OUR INTEREST.

THE SECOND ALTERNATIVE, DEFER EXCHANGE OF INSTRUMENTS, APPEARS TO BE THE PREFERRED APPROACH. IT SATISFIES CONGRESSIONAL REQUIREMENTS -- ALTHOUGH PERHAPS NOT COMPLETELY -- AND ASSURES TORRIJOS THAT THE TREATIES WOULD ENTER INTO EFFECT WITHIN A REASONABLE PERIOD OF TIME. WHILE THE TIMING OF EVENTS UNDER THIS ALTERNATIVE IS NOT PRECISE, IT HAS THE ADVANTAGE OF ALLOWING THE ADMINISTRATION AND THE CONGRESS TO WORK COOPERATIVELY. AND EVEN IF IT MEANT A DELAY UNTIL IMMEDIATELY AFTER THE ELECTION, IT OFFERS A SCHEDULE THAT TORRIJOS COULD PROBABLY ACCEPT.

REGARDLESS OF WHICH ALTERNATIVE YOU FINALLY SELECT YOU WILL WANT TO ACKNOWLEDGE FINAL SENATE ACTION. YOU MIGHT, FOR EXAMPLE, ISSUE A JOINT DECLARATION WITH GENERAL TORRIJOS EXPRESSING SATISFACTION WITH CULMINATION OF THE TREATY RATIFICATION PROCESS IN BOTH COUNTRIES AND DIRECTING PROMPT INITIATION OF JOINT PLANNING FOR IMPLEMENTATION. SUCH A STEP WOULD NOT ONLY HAVE A CALMING EFFECT ON TORRIJOS BUT WOULD ALSO BE A POSITIVE EXPRESSION OF EXPECTATION REGARDING THE NEW RELATIONSHIP WHICH BOTH COUNTRIES WILL UNDERTAKE TO BRING INTO EXISTENCE AS QUICKLY AS POSSIBLE. ALTERNATIVELY, MUCH THE SAME PURPOSE WOULD BE SERVED BY AN EXCHANGE OF LETTERS OR BY A PERSONAL VISIT TO PANAMA, ALTHOUGH YOU MAY WISH TO HOLD THE VISIT FOR THE CEREMONIAL OPPORTUNITY ASSOCIATED WITH AN EXCHANGE OF INSTRUMENTS.

WE WILL BE REVIEWING THIS ISSUE AS SENATE DEBATE PROCEEDS.
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Message Attributes

Automatic Decaptioning: Z
Capture Date: 26 sep 1999
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TREATY RATIFICATION, CANALS
Control Number: n/a
Copy: SINGLE
Draft Date: 16 feb 1978
Decaption Date: 20 Mar 2014
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 20 Mar 2014
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978STATE040746
Document Source: ADS
Document Unique ID: 00
Drafter: ARA/PAN:RRWYROUGH/JCHAAHR
Enclosure: n/a
Executive Order: 11652 GDS
Errors: n/a
Expiration:
Film Number: D780070-0925
Format: TEL
From: STATE
Handling Restrictions:
Image Path:
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Legacy Key: link1978/newtext/t197802120/baaafbvz.tel
Line Count: 201
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, TEXT ON MICROFILM
Message ID: db9db5cf-c288-dd11-92da-001cc4696bcc
Office: ORIGIN SS
Original Classification: SECRET
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 4
Previous Channel Indicators:
Previous Classification: SECRET
Previous Handling Restrictions: EXDIS
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 20 jul 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 3475644
Secure: OPEN
Status: NATIVE
Subject: PROPOSED MEMORANDUM FOR THE PRESIDENT
TAGS: PBOR, PN, US, PQ
To: PANAMA
Type: TE
vdkvgwkey: odbc://SAS/SAS.dbo.SAS_Docs/db9db5cf-c288-dd11-92da-001cc4696bcc
Review Markings:
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Declassified/Released
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Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014